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DEPUTY T. VERRAL, and ALEXANDER PANGBURN

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FRANCISCA CROSTHWAITE,

Plaintiff,

vs.

COUNTY OF SAN BERNARDINO,  
SHERIFF JOHN MCMAHON,

Defendants.

CASE NO. 5:17-cv-758 KK

**STIPULATED PROTECTIVE  
ORDER**

Assigned to:  
Magistrate Judge Kenly Kiya Kato

**1. A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment  
2 under the applicable legal principles. The parties further acknowledge, as set forth  
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
4 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
5 procedures that must be followed and the standards that will be applied when a party  
6 seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action may involve the production of peace officer's personnel  
9 materials, including but not limited to the following: investigations, including but  
10 not limited to an internal investigation, of an individually named party related to  
11 excessive force complaints. The production may also include medical records of  
12 Plaintiff. The parties agree to limit the release of such information, if any, to five  
13 years back from the date of the subject incident (March 18, 2016). Such information  
14 released will only be as it relates to sustained findings of such an excessive force  
15 complaint which falls within said agreed time period. In particular, this protective  
16 order would apply to investigation reports, if any, and recorded interviews, related  
17 to such investigations of those sustained findings of a complaint of excessive force  
18 with said time period. The parties have agreed the investigation report related to the  
19 subject matter of this litigation, as well as any recorded interviews, related to the  
20 subject incident, will be produced, except for reports that are privileged under  
21 attorney-work product and attorney-client privilege.

22 Special protection is warranted and required to protect from public disclosure  
23 and from use for any purpose other than prosecution of this action is warranted.  
24 Such confidential and proprietary materials and information consist of, among other  
25 things, information implicating privacy rights of third parties along with  
26 information otherwise generally unavailable to the public, or which may be  
27 privileged or otherwise protected from disclosure under state or federal statutes,  
28 court rules, case decisions, or common law. Accordingly, to expedite the flow of

1 information, to facilitate the prompt resolution of disputes over confidentiality of  
2 discovery materials, to adequately protect information the parties are entitled to  
3 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
4 of such material in preparation for and in the conduct of trial, to address their  
5 handling at the end of the litigation, and serve the ends of justice, a protective order  
6 for such information is justified in this matter. It is the intent of the parties that  
7 information will not be designated as confidential for tactical reasons and that  
8 nothing be so designated without a good faith belief that it has been maintained in  
9 a confidential, non-public manner, and there is good cause why it should not be part  
10 of the public record of this case.

11 Documents, records, and information (“Confidential Material”) disclosed  
12 pursuant to this protective order, will be designated consecutively by page numbers  
13 and each page will be marked “CONFIDENTIAL – UNLAWFUL TO  
14 DUPLICATE.”

## 15 **2. DEFINITIONS**

16 2.1 Action: This pending federal lawsuit, *Crosthwaite v. County of San*  
17 *Bernardino, et al.*, 5:17-cv-758 KKK.

18 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
19 of information or items under this Order.

20 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
21 how it is generated, stored or maintained) or tangible things that qualify for  
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
23 the Good Cause Statement.

24 2.4 Designating Party: a Party or Non-Party that designates information or  
25 items that it produces in disclosures or in responses to discovery as  
26 “CONFIDENTIAL.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of  
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced  
2 or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
5 an expert witness or as a consultant in this Action.

6 2.7 House Counsel: attorneys who are employees of a party to this Action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party  
12 to this Action but are retained to represent or advise a party to this Action and have  
13 appeared in this Action on behalf of that party or are affiliated with a law firm which  
14 has appeared on behalf of that party, and includes support staff.

15 2.10 Party: any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Counsel of Record (and their support  
17 staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20 2.12 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

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1           **3. SCOPE**

2           The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7           Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9           **4. DURATION**

10          Even after final disposition of this litigation, the confidentiality obligations  
11 imposed by this Order shall remain in effect until a Designating Party agrees  
12 otherwise in writing or a court order otherwise directs. Final disposition shall be  
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
14 with or without prejudice; and (2) final judgment herein after the completion and  
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
16 including the time limits for filing any motions or applications for extension of time  
17 pursuant to applicable law.

18          **5. DESIGNATING PROTECTED MATERIAL**

19          5.1 Exercise of Restraint and Care in Designating Material for Protection.

20          Each Party or Non-Party that designates information or items for protection  
21 under this Order must take care to limit any such designation to specific material  
22 that qualifies under the appropriate standards. The Designating Party must  
23 designate for protection only those parts of material, documents, items, or oral or  
24 written communications that qualify so that other portions of the material,  
25 documents, items, or communications for which protection is not warranted are not  
26 swept unjustifiably within the ambit of this Order.

27          Mass, indiscriminate, or routinized designations are prohibited. Designations  
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber the case development process or to impose  
2 unnecessary expenses and burdens on other parties) may expose the Designating  
3 Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it  
5 designated for protection do not qualify for protection, that Designating Party must  
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
10 under this Order must be clearly so designated before the material is disclosed or  
11 produced.

12 **Designation in conformity with this Order requires:**

13 (a) for information in documentary form (e.g., paper or electronic documents,  
14 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
15 the Producing Party affix at a minimum, the legend "CONFIDENTIAL"  
16 (hereinafter "CONFIDENTIAL legend"), to each page that contains protected  
17 material. If only a portion or portions of the material on a page qualifies for  
18 protection, the Producing Party also must clearly identify the protected portion(s)  
19 (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection  
21 need not designate them for protection until after the inspecting Party has indicated  
22 which documents it would like copied and produced. During the inspection and  
23 before the designation, all of the material made available for inspection shall be  
24 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
25 documents it wants copied and produced, the Producing Party must determine  
26 which documents, or portions thereof, qualify for protection under this Order. Then,  
27 before producing the specified documents, the Producing Party must affix the  
28 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing  
2 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
3 markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify the  
5 Disclosure or Discovery Material on the record, before the close of the deposition  
6 all protected testimony.

7 (c) for information produced in some form other than documentary and for  
8 any other tangible items, that the Producing Party affix in a prominent place on the  
9 exterior of the container or containers in which the information is stored the legend  
10 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
11 protection, the Producing Party, to the extent practicable, shall identify the protected  
12 portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
14 failure to designate qualified information or items does not, standing alone, waive  
15 the Designating Party’s right to secure protection under this Order for such material.  
16 Upon timely correction of a designation, the Receiving Party must make reasonable  
17 efforts to assure that the material is treated in accordance with the provisions of this  
18 Order.

## 19 **6. CONFIDENTIALITY DESIGNATIONS**

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
21 designation of confidentiality at any time that is consistent with the Court’s  
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on  
26 the Designating Party. Frivolous challenges, and those made for an improper  
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
28 parties) may expose the Challenging Party to sanctions. Unless the Designating

1 Party has waived or withdrawn the confidentiality designation, all parties shall  
2 continue to afford the material in question the level of protection to which it is  
3 entitled under the Producing Party's designation until the Court rules on the  
4 challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this  
8 Action only for prosecuting, defending, or attempting to settle this Action. Such  
9 Protected Material may be disclosed only to the categories of persons and under the  
10 conditions described in this Order. When the Action has been terminated, a  
11 Receiving Party must comply with the provisions of section 13 below (FINAL  
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a  
14 location and in a secure manner that ensures that access is limited to the persons  
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
17 otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated  
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Counsel of Record in this Action, as well as  
21 employees of said Counsel of Record to whom it is reasonably necessary to disclose  
22 the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of the  
24 Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom  
26 disclosure is reasonably necessary for this Action must sign the "Acknowledgment  
27 and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;



- 1 (e) court reporters and their staff;
- 2 (f) professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 5 (g) the author or recipient of a document containing the information or a
- 6 custodian or other person who otherwise possessed or knew the information;
- 7 (h) witnesses, and attorneys for witnesses in the Action to whom disclosure
- 8 is reasonably necessary during their depositions provided: (1) the deposing party
- 9 requests that the witness sign the form attached as Exhibit A hereto; and (2) any
- 10 non-party witness will not be permitted to keep any confidential information, unless
- 11 otherwise agreed by the parties or ordered by the court. Pages of transcribed
- 12 deposition testimony or exhibits to depositions that reveal Protected Material shall
- 13 be separately bound by the court reporter and may not be disclosed to anyone except
- 14 as permitted under this Stipulated Protective Order; and
- 15 (i) any mediator or settlement officer, and their supporting personnel,
- 16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**

18 **PRODUCED IN OTHER LITIGATION**

19 If a Party is served with a subpoena or a court order issued in other litigation

20 that compels disclosure of any information or items designated in this Action as

21 “CONFIDENTIAL,” that Party must:

- 22 (a) promptly notify in writing the Designating Party. Such notification shall
- 23 include a copy of the subpoena or court order;
- 24 (b) promptly notify in writing the party who caused the subpoena or order to
- 25 issue in the other litigation that some or all of the material covered by the subpoena
- 26 or order is subject to this Protective Order. Such notification shall include a copy of
- 27 this Stipulated Protective Order; and
- 28 (c) cooperate with respect to all reasonable procedures sought to be pursued

1 by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served with  
3 the subpoena or court order shall not produce any information designated in this  
4 action as “CONFIDENTIAL” before a determination by the court from which the  
5 subpoena or order issued, unless the Party has obtained the Designating Party’s  
6 permission. The Designating Party shall bear the burden and expense of seeking  
7 protection in that court of its confidential material and nothing in these provisions  
8 should be construed as authorizing or encouraging a Receiving Party in this Action  
9 to disobey a lawful directive from another court.

10 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
11 **PRODUCED IN THIS LITIGATION**

12 (a) The terms of this Order are applicable to information produced by a Non-  
13 Party in this Action and designated as “CONFIDENTIAL.” Such information  
14 produced by Non-Parties in connection with this litigation is protected by the  
15 remedies and relief provided by this Order. Nothing in these provisions should be  
16 construed as prohibiting a Non-Party from seeking additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to  
18 produce a Non-Party’s confidential information in its possession, and the Party is  
19 subject to an agreement with the Non-Party not to produce the Non-Party’s  
20 confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-Party  
22 that some or all of the information requested is subject to a confidentiality  
23 agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated  
25 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
26 specific description of the information requested; and

27 (3) make the information requested available for inspection by the  
28 Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a

1 communication or information covered by the attorney-client privilege or work  
2 product protection, the parties may incorporate their agreement in the stipulated  
3 protective order submitted to the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
8 Protective Order, no Party waives any right it otherwise would have to object to  
9 disclosing or producing any information or item on any ground not addressed in this  
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
11 ground to use in evidence any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any  
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
14 only be filed under seal pursuant to a court order authorizing the sealing of the  
15 specific Protected Material at issue. If a Party's request to file Protected Material  
16 under seal is denied by the court, then the Receiving Party may file the information  
17 in the public record unless otherwise instructed by the court.

18 **13. FINAL DISPOSITION**

19 After the final disposition of this Action, as defined in paragraph 4, within 60  
20 days of a written request by the Designating Party, each Receiving Party must return  
21 all Protected Material to the Producing Party or destroy such material. As used in  
22 this subdivision, "all Protected Material" includes all copies, abstracts,  
23 compilations, summaries, and any other format reproducing or capturing any of the  
24 Protected material. Whether the Protected Material is returned or destroyed, the  
25 Receiving Party must submit a written certification to the Producing Party (and, if  
26 not the same person or entity, to the Designating Party) by the 60-day deadline that  
27 (1) identifies (by category, where appropriate) all the Protected Material that was  
28 returned or destroyed and (2) affirms that the Receiving Party has not retained any

copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

**14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.**

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 13, 2019

LAW OFFICES OF JAMES S. TERRELL

/s/ James S. Terrell

**JAMES S. TERREL**

Attorney for Plaintiff

DATED: February 13, 2019

LAW OFFICES OF SHARON J. BRUNNER

/s/ Sharon J. Brunner

**JAMES S. TERREL**

Attorney for Plaintiff

DATED: February 13, 2019

MICHELLE D. BLAKEMORE  
County Counsel

/s/ Janine Highiet-Ivicevic

**JANINE HIGHIET-IVICEVIC**

Deputy County Counsel

Attorneys for Defendants COUNTY OF SAN  
BERNARDINO, SHERIFF JOHN  
McMAHON, DEPUTY TREVOR JAMES,  
DEPUTY TOMMY DICKEY, DEPUTY T.  
VERRAL, and ALEXANDER PANGBURN

1 Pursuant to Local Rule 5-4.3.4 (a)(2)(i), I, Janine Highiet-Ivicevic, do hereby  
2 attest that all of the signatories listed on this Joint Protective Order, and on whose  
3 behalf the filing is submitted, concur in the filing's content and authorize the filing  
4 of this document.

5 /s/ Janine Highiet-Ivicevic

6 **JANINE HIGHIET-IVICEVIC**

7  
8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

9  
10 DATED: 2/13/19



11 Honorable Kenly Kiya Kato  
12 United States Magistrate Judge  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Central District of California  
on \_\_\_\_\_ [date] in the case of *Francisca Crosthwaite v. County of San Bernardino,*  
*et al.*, 5:17-cv-758 KK]. I agree to comply with and to be bound by all the terms of  
this Stipulated Protective Order and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment in the nature of contempt.  
I solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Stipulated Protective Order to any person or entity except in  
strict compliance with the provisions of this Order. I further agree to submit to the  
jurisdiction of the United States District Court for the Central District of California  
for the purpose of enforcing the terms of this Stipulated Protective Order, even if  
such enforcement proceedings occur after termination of this action. I hereby  
appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_